

Conference Presentation Draft
International Studies Association Annual Meeting
26-29 March 2014
Toronto

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Rethinking Membership: Toward a Genealogy of Statelessness

Abstract:

This paper is part of a larger project that contributes to the turn to the problem of membership and political exclusion in international political theory that has begun to take seriously the challenge of radical exclusion posed by statelessness and the denial of citizenship. The aim of the larger project is to articulate a novel account of statelessness as domination and with that to lay the foundation for addressing the claims to justice of stateless persons. In this part of the project I focus on providing a genealogy of the emergence of statelessness. The motivation underlying this strategy is that statelessness must be historicized in order to be fully understood as contingent and mutable. Far from being coeval with the emergence of the state or even sovereignty, this form of political exclusion has relatively recent roots, and was produced as a result of specific features of the developing inter-state system. I explore how this process unfolded by critically engaging with Hannah Arendt's account of the emergence of statelessness in the inter-war era. In contrast to Arendt, I isolate particular practices, institutions, and norms that at this juncture suddenly re-define the significance and salience of nationality and territorial boundaries, while also providing the conditions for the emergence of mass refugee flows and population displacements. Such a historical excavation of the roots of statelessness is necessary because it is only once we have properly come to terms with the origins and genesis of this form of political exclusion as a specifically modern phenomenon that we will be adequately prepared to take up the broader normative challenges that the claims of stateless persons raise to our contemporary international order.

Keywords: Citizenship; International Relations Theory; Political Theory

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Rethinking Membership: Towards a Genealogy of Statelessness

This paper forms a part of a larger project, the primary task of which is to offer a normative re-evaluation of the key institutions of citizenship and territorial sovereignty in our contemporary world in order to explore what the implications of statelessness should be for international ethics. More substantively, my project aims to indicate how our normative orders—both on the level of the state system and on the level of liberal democracies—ought to be transformed in light of the claims to justice of stateless persons. Put more sharply, can contemporary practices of citizenship embedded in the state system and supported by powerful states be justifiably maintained while respecting the claims of stateless persons, and if not, how ought these institutions to be revised in order to accommodate these claims?

In the broader project I analyze how the conceptual problems at the core of statelessness can be traced back to the emergence of exclusionary understandings of political membership, and in particular, to the relatively recent proliferation of related norms within the international state system. In contrast to previous scholarship—which often treats statelessness alongside issues of immigration—I suggest that the development of statelessness as a mass phenomenon signals a distinct shift in our understanding of membership in the state and the way that claims to membership are instantiated in global politics in a context of international cooperation. Moreover, by beginning with an analysis of the position of stateless persons as well as refugees, I show how we can develop a far deeper understanding of how citizenship should be broadly reconceptualized beyond the terms of mere political status, as a necessary condition of well-being. Through such an analysis of what is at stake in statelessness, we can gain a far more robust understanding of the way the category of the citizen functions, both conceptually and practically,

in our contemporary world. As the limit case of political exclusion, the position of the stateless can thus shed light on broader patterns of injustice within our citizenship practices, whether in immigration policy or in the way forced migration and displacement generated by interstate conflict and intrastate violence is addressed by the international community. Building on this analysis of the interrelation between citizenship and statelessness my project offers a normative account of how exclusionary citizenship practices ought to be transformed. My central argument is that statelessness constitutes a serious and pervasive harm to individuals, in particular, by leaving them vulnerable to ‘domination’ or arbitrary power. I therefore suggest that this harm should lead us to call into question aspects of the normative framework of what we might call the international citizenship regime and points to the need for a critique of the contemporary global order.

The Origins of Statelessness

Looking back over the Twentieth and early Twenty-first century it is tragically clear that the phenomenon of statelessness has become an enduring feature of our world. While contemporary observers of the appearance of mass statelessness expected that the widespread dislocations, displacements and exclusions that had attended the refugee flows of the interwar era would be at most a transient and temporary event, from our vantage point, their optimism seems at best misplaced.¹ Indeed, despite the continual legal innovations of international lawyers, as well as the proliferation of organizations charged with addressing such concerns, statelessness has remained a lasting issue in international politics. The persistence of statelessness at the very least ought to compel us to take seriously the normative implications of this extreme form of

¹ A poignant illustration of this perspective is revealed by the limited mandate proposed for the High Commission for Refugees. As the precursor institution to our modern refugee regime, it was expected that the Commission “would gradually phase itself out of existence as the postwar refugee crisis diminished” - a process that was anticipated to take no more than a decade. (Marrus, 2001: 111)

political exclusion. But of equal importance, understanding the historical context of statelessness is reveals the contingent nature of this form of political exclusion, while also allowing us to denaturalize our contemporary notions of citizenship and community. Therefore, as a preliminary to developing a normative approach to statelessness we must first attend to the context of its appearance.

To this end, I want to resist the temptation to reduce the causes of statelessness to the emergence of the nation state, citizenship, and sovereignty, but instead understand it as a distinctively modern phenomenon. To be sure, the rise in early modernity of national citizenship “introduced a new type of privilege that was protected for some by excluding others” essentially shifting “exclusion from class to nation, the modern formal line of belonging.”² But it would be a mistake to claim that states simply produce statelessness and that the emergence of modern citizenship in its national republican form marks the inception of the extreme forms of exclusion that have become pervasive in the Twentieth and Twenty-first centuries. As we shall see, nation, state, and citizenship are necessary, but not sufficient, conditions for the emergence of statelessness as a mass phenomenon, and part of my intent in historicizing statelessness is to indicate that this particular constellation is of fairly recent appearance.

In this chapter my aim is to offer a history or genealogy of the construction of statelessness within the context of early Twentieth-century Europe in order to shed light on why widespread statelessness appears for the first time at this particular historical moment. The task is therefore in part to isolate the particular practices, institutions, and norms that at this juncture suddenly re-define the significance and salience of nationality and territorial boundaries, while also providing the conditions for the emergence of mass refugee flows and population

² Douzinas, 2007: 45.

displacements. Such a historical excavation of the roots of statelessness is necessary because it is only once we have properly come to terms with the origins and genesis of this form of political exclusion as a specifically modern phenomenon that we will be adequately prepared to take up the broader normative challenges that the claims of stateless persons raise to our contemporary international order.

What is more, attending to this dimension remains crucial because of a number of quandaries raised by the context of the inter-war era. For instance, if statelessness is best explained as a product of the modern state's claims to absolute territorial sovereignty, why is it that statelessness emerges historically so late, given that the notion of Westphalian sovereignty had appeared centuries earlier? Moreover, how is it that the sudden transformation in the importance of nationality to both interstate migration and fundamental wellbeing was almost directly preceded by one of the most liberal regimes of border control in Western history, in which individuals experienced a level of free movement across national borders previously unparalleled in modern Europe? Finally, if statelessness is best explained by reference to the particularities of the inter-war European context, what explains the persistence and indeed worldwide spread of statelessness?

This schematic history of statelessness aims to address these questions and in doing so provide an account of the origins of statelessness that ought to inform our understanding of the precise injustice statelessness represents and of the normative considerations it demands we address. My claim in this chapter is that the emergence of statelessness within this particular timeframe cannot be reduced to a singular cause or factor, but can only be explained by attending to a constellation of developments. The central features my account identifies and subsequently unpacks are the coalescence of an institutionalized state system that would rapidly transform the

significance of the concepts of state sovereignty, territoriality, and national citizenship, as well as the emergence of techniques and practices that would give concrete substance to the aspirations of states to realize border control and regulate membership. What is more, I wish to suggest that the rapid spread of these features of an emerging global state system are what precipitate the lasting challenge of statelessness in world politics.

I begin by taking Hannah Arendt's now classic account of the crisis of statelessness in *The Origins of Totalitarianism* as a point of departure for asking why and how statelessness emerges as modern crisis. While Arendt's philosophical account has proved an important and influential touchstone for contemporary political theorists concerned with the dilemmas posed by statelessness, I argue that Arendt's account does not go far enough in explaining precisely why inter-war Europe became a site of mass statelessness. By turning to resources from the history and sociology of immigration, migration, and border control, I suggest that a missing aspect of Arendt's account concerns the place of an increasingly complete and organized state system that introduces the mechanisms necessary to enable statelessness as a global crisis. From here I turn to developing this subsequent historical account of the genesis of statelessness. To this end I argue that we should link the phenomena of mass statelessness with a particular configuration of the European state system, emerging technologies of population regulation which I call 'governmentalities of membership' and to the proliferation of these features within the international order. This moment was the "coupling of state sovereignty and nationalism with border control" which, beginning in the context of inter-war Europe, gave the state "the power and the institutional legitimacy to exclude refugees from civil society."³ Having sketched the contours of the norms, practices, and institutions that constitute statelessness as a modern

³ Sassen, 2000: 78

phenomena and tracing the conditions of its global proliferation, the final section of the chapter turns to how this historical context informs our contemporary situation.

I. Arendt on Statelessness

Arendt situates her account of the eruption of statelessness in the European context as part of a broader narrative of the crisis of modernity. She links this moment of near collapse of the Western political order to a constellation of factors related to the appearance of modern anti-Semitism, the spread of European imperialism, and the rise of totalitarian movements. Although this discussion of statelessness appears late in *Origins*, arguably the emergence of mass statelessness plays a central role in her broader account. Indeed, Arendt presciently calls the stateless the “most symptomatic group in contemporary politics” suggesting that the production of statelessness ought to be understood as both a catalytic factor in the emergence of totalitarianism and as a lasting crisis of the post-totalitarian world.⁴ As will become apparent, Arendt attributed particular importance to the development of mass statelessness precisely because of the fissures in our modern normative order that its sudden manifestation revealed.

Arendt points to two developments as conditions for the appearance of widespread statelessness in early Twentieth-century Europe. The first of these concerned a deep conceptual tension that Arendt identified in the development of the nation-state as a form of political community. As Arendt suggested, this fundamental contradiction implicit in the principles of the nation-state system initially revealed itself in the context of the post-World War One minorities treaties that attempted to restructure Europe’s political landscape in the wake of the sudden implosion of the Ottoman, Austro-Hungarian, German, and Russian empires. The challenge that beset Europe’s peacemakers arose from their vain attempts to impose the “old trinity of state-

⁴ Arendt, 1973: 277

people-territory” upon these newly constituted communities in the name of realizing the principle of national self-determination.

The unavoidable presence of sizable minorities within these successor states left the application of the principle of national self-determination near impossible insofar as this required establishing territorial states in congruence with preexisting national or ethnic populations. The non-contiguous nature of national groupings within southern and eastern Europe simply proved too scattered to be easily accommodated by such a model. In order to remedy the difficulties raised by the introduction of the architecture of the nation-state into a context seemingly at odds with its fundamental principles, postwar leaders had recourse to special minority rights protections—to be enforced by the emerging League of Nations—in order to isolate or protect the interests of non-majority nationalities within the newly fashioned states. However, as Arendt points out, this very solution paradoxically revealed the deep contradictions and limitations of the nation-state model. As she notes,

[t]he Minority Treaties said in plain language what until then had been only implied in the working system of nation-states, namely, that only nationals could be citizens, only people of the same national origin could enjoy the full protection of legal institutions, that persons of different nationality needed some law of exception until or unless they were completely assimilated and divorced from their origin.⁵

The deeper implication of the Minority Treaties was thus the open admission that the assertion of national sovereignty expressed in the notion of self-determination was in sharp tension with the claim of the state to provide secure legal status and standing to all individuals residing within its territory. For Arendt, this moment therefore symbolized the conquest of the nation over the state, meaning that it indicated that the legal and institutional structures of the modern state were revealed to be subservient to the demands and fundamental interests of the will of the nation.

⁵ Arendt, 1973: 275.

However, the full implications of this development would only become apparent with the appearance and rapid proliferation of statelessness across the European continent. Triggered by the till-then unheard of policy of mass denationalizations on the part of governments wishing to rid themselves of undesirable populations, the appearance of ever-increasing numbers of stateless persons quickly eroded or overwhelmed the early responses to this heretofore exceptional status. The traditional remedies of asylum and naturalization were quickly discarded in the face of unprecedented mass migrations of refugees. Moreover, governments feared that any attempts to integrate or settle stateless persons would only encourage further denationalizations on the part of illiberal regimes. Thus the precarious condition of the stateless was only rendered more fraught under the perverse logic that this was necessary to stymie further denationalizations. But equally problematic proved attempts to mitigate the flow of stateless persons through deportation or repatriation, for there was simply no legal or institutional framework for dealing with individuals who had been stripped of the status of citizenship. The consequence of this was that the proliferation of statelessness rapidly triggered a turn to extra-legal means, as states sought to mobilize police powers to deal with large and increasingly unwelcomed flows of refugees across their borders. For Arendt this moment marked a critical juncture insofar as it symbolized the open privileging of national interests over the constraints of legality and with that the erosion of the rule of law within the context of even avowedly liberal-democratic constitutional states.

This outcome was the result of the unstable balance that had always remained between the legal framework of the modern state and the idea of the nation that grounded the legitimacy of ostensibly self-determining political communities. However, according to Arendt, the tension between nation and state was capable of remaining obscured until this later historical moment, only becoming apparent in the interwar context. This was because the development of the nation-

state had coincided with the development of constitutional government and the rule of law, which had gradually displaced the despotic governance and ‘personal’ rule of the absolutist state.⁶ But as the minority treaties and then mass statelessness placed stress upon the ability of states to maintain their claim to effective sovereignty in matters of political membership and immigration in a manner consistent with legality, the latter rapidly gave way to the exercise of arbitrary police power and bureaucratic rule. Statelessness thus represented both the eventual preeminence of the nation over the constraints imposed by the modern legal-bureaucratic state, while also acting as a visible catalyst in the continued erosion of the rule of law. Crucially, the implications of this outcome were by no means confined to the situation of refugees. According to Arendt, the introduction of a rule of exception as states increasingly began to differentiate the legal status and protections of citizens and aliens could only compromise the notion of equality before the law central to the institutions of the modern state.⁷ Thus the parting of ways of order and legitimacy triggered by the spread of statelessness paved the way for the broader extension of arbitrary power.

Within Arendt’s account the above developments reveal a second conceptual rupture—the apparent instability and paradox of human rights. Indeed, the difficulties posed by what Arendt termed the ‘perplexities of the rights of man’ rapidly became apparent as individuals unprotected by any political community and excluded from full standing in civil society became

⁶ Here we might recall that even Hobbes’ ‘unbound’ sovereign must operate through representation and the medium of positive law, which in turn places constraints on, or at least importantly shapes, the exercise of state power. Thus even the Leviathan bears the marks of at least the initial effects of bureaucratic rationalization upon absolutist rule.

⁷ As Arendt notes, the “nation-state cannot exist once its principle of equality before the law has broken down. Without this legal equality, which originally was destined to replace the older laws and orders of the feudal society, the nation dissolves into an anarchic mass of over- and underprivileged individuals. Laws that are not equal for all revert to rights and privileges, something contradictory to the very nature of nation-states. The clearer the proof of their inability to treat stateless people as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police.” (Arendt, 1973: 290)

widespread across the European continent. Thus it was the experience of stateless persons that first revealed the deeply contingent nature of human rights. Although proclaimed in the name of humanity and grounded in the fundament of human nature, the purportedly inalienable rights of man turned out to be dependent upon membership within a particular community. Thus, according to Arendt, it came to be that individuals who found themselves expelled from membership within any particular community were rendered fundamentally rightless.

However, to fully understand the relationship between statelessness and the apparent conceptual implosion of human rights, we must briefly attend to Arendt's understanding of the normative foundations of the latter. Arguably the modern discourse of human rights can be traced to the context of the Atlantic revolutions of the late 18th century, in particular the French Revolution's *Declaration of the Rights of Man and Citizen*, which Arendt takes as the paradigmatic formulation of our contemporary understanding of human rights.

According to Arendt it is in this notion of inalienable human rights that we see the dramatic and historically unprecedented attempt to re-locate the legitimacy of positive law and authority of government in man himself. In this sense the emergence of the modern conception of human rights represented a decisive rejection of the stratified feudal hierarchies of privilege rooted in tradition and history in favor of a re-founding of politics in human nature itself. But this relocation of human rights in a conception of man's fundamental nature should also be understood as a response to the sudden erosion of past structures of traditional authority. According to Arendt, they thus represent an attempt to provide foundations for claims of human dignity and equal status in a context in which prior transcendental grounds for authority were rapidly being eroded or vanishing all together.

In her discussion of the problematic nature of human rights Arendt draws our attention to

the basis on which these rights were declared—namely an abstract conception of the individual generalized beyond her situation within a political community. This reliance on an abstract, isolated notion of man as the fundamental bearer of rights was thoroughly entwined with the assumption that these rights derive from no other source than man’s inherent nature. By restricting human rights to this basis, the authors of the *Declaration* sought to provide a secure foundation for these rights that protected them from being revoked by the state. Any valid political system presupposed these rights, and thus needed to recognize them in order to govern legitimately. But within a political system, the sole guarantor of these rights was the political sovereign itself. A contradiction arose, in that the very rights set forth as natural and thus prior to the sovereign, relied upon the sovereign for their protection within the political community.

Thus according to Arendt, the optimism and hope that attended the emergence of our modern paradigm of human rights was fatally misplaced for it concealed the fact that these so-called inalienable rights could only be realized in the context of belonging to a political community. The rights of man were paradoxically dependent on our status as citizens and the experience of the stateless thus provided a powerful indictment of this understanding of human rights. Indeed, it was precisely as individuals apparently ‘unencumbered’ by membership in a particular community that the stateless appeared, and yet it was this very exclusion that rendered them fundamentally rightless and subject to domination. As Arendt put it,

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.⁸

What the stateless were denied in their exclusion from membership was the “right to have rights” – the right to belong to a community upon which the enjoyment of all particular rights depended,

⁸ Arendt, 1973: 296.

the status and standing of one "who counts" in the eyes of others. For Arendt, what this flawed conception of human rights missed was the fundamentally relational quality of rights claims and their dependence on a political context and institutional structure for their realization. Only by rejecting the image of human rights as natural and thus inalienable can we appreciate their fragile and contingent nature; only by acknowledging that we hold human rights as institutionally and politically enabled agents can we begin to take notice of how they might be constituted and secured. Yet tragically these dimensions of the dependent relationship of our capacity to enjoy equal standing and dignity as human beings only came to the fore in the context of masses of individuals who found themselves bereft of this very status.

Arendt's discussion of the emergence of statelessness provides us with a compelling portrait of the conceptual tensions that both contribute to and were revealed by statelessness. However, there remain a number of limitations to her presentation.⁹ Approaching modern mass statelessness in part through the vantage point of the history of ideas, Arendt provides us with a rich account of the philosophical and ideological roots of the phenomenon. Yet this very focus on the conceptual roots of statelessness is not without its shortcomings. In particular, Arendt's discussion lacks sufficient attention to the institutional context of the interwar era as well as the broader historical experience of the development of the modern state. What the Arendtian account of statelessness lacks is details of the material or technological features of this historical moment or to the role of an emerging interstate system in constituting statelessness.

In this sense the central difficulty that Arendt's account leaves insufficiently addressed concerns the temporalization of statelessness. How does statelessness fit into a larger history of

⁹ These shortcomings are understandable considering the fact that Arendt's discussion of statelessness appears as one facet of a broader narrative concerned with the near collapse of western civilization and the rise of totalitarianism. However, given my purposes I must develop a more robust account to supplement Arendt's insights.

state development within Europe, and what features of the historical context of the inter-war era were necessary to transform statelessness into a mass phenomena? Attending even briefly to a broader historical horizon than Arendt's account helps us place the dislocations and displacements of the inter-war era within a larger history of European state formation.

More centrally to the question at hand, Arendt's account fails to acknowledge how the inter-war era was a moment in which a constellation of institutions and technologies necessary for the production of mass statelessness explosively coalesced. These developments included the prior emergence of new modes of managing and monitoring populations as part of the increased bureaucratic rationalization of the state, the collapse of dominant models of market governance, and the sudden re-introduction of techniques of border control. Arendt also does not adequately consider how the norms, practices, and institutions of an emerging interstate system played a decisive role in legitimating the category of nationality as a condition for regulating border crossings. To correct this deficiency, I will now provide an account of these developments.

II. The Institutional and Ideational Antecedents of Statelessness

To set the stage I must first engage with the novel constellation of material and organizational conditions necessary for the production of statelessness as a mass phenomenon. As we shall see, the genesis of statelessness is a complex story, involving the convergence of a number of historical moments. These include the far earlier emergence of norms of territoriality and sovereignty, the transformation of the relationship of the state to its subjects captured by the rise of novel 'technologies' of population control and the process of bureaucratic rationalization, as well as the more recent re-introduction of practices of border coercion in the context of war-time security, the shift away from classical liberal economic ideology, and coalescing of an emerging interstate system. These factors created the conditions for statelessness in the interwar era

precisely because modern European states were able to bring to bear their expanded scope of institutional and regulative capacity to, in concert, exercise a till-then unprecedented degree of effective control over nationality, membership-rights, and immigration. The purposes of drawing out these elements of the emergence of statelessness are manifold. For one, by situating statelessness as the product of specific and recent historical developments, we can denaturalize the related categories of nationality and citizenship as contingent and thus open them to deeper normative interrogation and questioning. Far from taking the category of national citizenship as a given, we can see how statelessness and the salience of nationality are in fact coeval and entwined. Additionally, by drawing attention to the organizational and technological conditions which produce statelessness, this account will highlight how domination (understood as subjection to arbitrary power) is institutionally enabled by our current international order. By recognizing the implication of our norms and practices in the production of domination we will also come to see the solution to statelessness as a matter of reforming our institutions. Finally, by reconstructing the context in which statelessness emerges we can draw important continuities with our present and begin to trace a broader trajectory of institutional coalesce that continues to intensify to this day.

1. Precursors to statelessness: Governmentality and modern rule

It has been customary for some time to view the right to regulate migration and immigration, naturalization and nationality as direct entailments of state sovereignty. This apparently immutable reality formed the core of the dilemma identified by Arendt that we canvassed above. According to that account, the ‘right to have rights’ upon which all other rights claims depend is itself contingent upon the status of membership in a community. Citing the eminent international lawyer Lawrence Preuss, Arendt thus asserts that “it had always been true

that sovereignty is nowhere more absolute than in matters of ‘emigration, naturalization, nationality, and expulsion’”.¹⁰ For Arendt, the dilemma of statelessness therefore derived from the fact that the lack of membership entailed by the denial of the status of citizenship lies at the expansive and largely unconstrained discretion of states. The implication of this was that in a world organized into states, the problem of statelessness would remain tragically ineradicable.¹¹

The notion that the state had always exercised control over territorial admission and membership status as entailments of sovereignty was by no means an isolated view at the time Arendt was writing. A number of influential turn-of-the-century legal scholars echoed this sentiment, treating the state’s power to regulate entrance and admission to territory and membership as entirely within the domain of internal jurisdiction.¹² Nor has this perspective lost much of its force over time, with post-war legal scholars largely affirming such a view of sovereign prerogative and the limited role of international law in constraining state action. Paul Weiss echoes this sentiment in noting that the “right of a State to determine who are, and who are not, its nationals is an essential element of sovereignty.”¹³ Similarly, with regard to the rights of expulsion and immigration, Guy Goodwin-Gill notes with regret that it is “common to find expressed the view that such matters are for the local State alone to decide, in the plenitude of its

¹⁰ Arendt, 1973: 278.

¹¹ As Arendt puts it, “Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether.” (Arendt, 1973: 297)

¹² See discussion at Plender, 1999: 2.

¹³ Weis, Paul. Nationality and statelessness in international law. No. 28. Brill, 1979. p. 65. Indeed, it is worth noting that even in the case of the EU – often heralded as indicative of the eclipse of sovereignty – to this day the right of naturalization and to determine the terms of naturalization remains a jealously guarded prerogative of states. See D. Kochencov, *Double Nationality in the EU*, 2011.

sovereignty.”¹⁴ These apparent realities seem to confirm Arendt’s far from sanguine assessment that statelessness would be a permanent and enduring feature of our contemporary world.¹⁵

Yet despite their apparent entrenchment in the principle of state sovereignty, it would be a mistake to assume that the norms and practices of membership that we now take for granted in fact emerged with either the early-modern state or the so-called Westphalian state system. The reason for this is that European states were neither capable nor particularly interested in regulating entrance and membership based on our contemporary notion of nationality until fairly recently and immigration was largely viewed as beyond the ambit of state interests.¹⁶ Indeed, it is a striking fact that this lack of both principle and practice was equally reflected in the thought of early modern theorists of the state and of international law, who, in contrast to the views canvassed above, saw the right of individual free movement as taking precedence over any state’s claim to territorial jurisdiction.¹⁷ Thus the absolute right of states to exclude individuals was relatively absent from both theory and practice until a much later historical date.

To be sure, both sovereignty and state were important to the development of exclusionary forms of membership grounded in the notion of nationality. The claim of supreme jurisdiction over territory anticipates the subsequent interest of states in exercising increasingly greater degrees of control over their population as well as the emergence of national citizenship as the basic form of membership of individuals within the international system. Moreover, the norms

¹⁴ Goodwin-Gill, Guy S. *International Law and the movement of persons between states*. Clarendon Press, 1978, 51.

¹⁵ Subsequent readers of Arendt have radicalized this claim to arguably dubious proportions; consider G. Agamen’s suggestion that the refugee is merely the mirror of the permanent relation of exclusionary inclusion between the sovereign power and bare life in modern politics: “the refugee causes the secret presupposition of the political domain – bare life – to appear for an instant within that domain.” (Guy, 77)

¹⁶ As Sahilns notes, the 19th century state for the most part withheld from intervening in the social sphere, and with that, with the regulation of migration. (Sahilns: 121) . Sassen echoes this sentiment, noting that prior to the 20th century, “the notion of state control over borders was not really established.” (Sassen: XV)

¹⁷ Vitoria, Grotius, Pufendorf, Kant, *Perpetual Peace*, Definitive Article 3. [Cite]

We will look into the sources of the early modern bias against mobility restrictions subsequently.

[Bracketed: Is it that territoriality and population were not mapped onto each other? Or that early modern writers viewed movement restrictions as a tyrannical feudal impulse incompatible with the norms of modernity?]

implicit in the international principle of sovereignty would provide the presumptive justification of states' claims to unilateral authority over entrance and membership, while also producing the basis for the forms of coordination states would increasingly be compelled to take up in order to control migration, immigration, and access to citizenship.¹⁸ However, these features cannot sufficiently explain why statelessness emerged at this particular historical juncture. The reason for this is that in order for mass statelessness to exist, the notion of nationality as a mechanism of control and marker of identity must not only have become salient, but must actively be institutionalized through bureaucratic and administrative means.¹⁹ This means that nationality and national belonging are historical artifacts²⁰ both the product of a shift in concern of the state with regard to those it claims authority over and the, as we shall see historically contingent, institutionalization of those concerns into a state system such that statelessness was made possible in the early 20th century.

Therefore three important developments, under-appreciated by Arendt's account are necessary to explain the emergence of statelessness First, the period between the Peace of Westphalia and the First World War was one in which the relationship between the state, territory, and those subject to political authority went through an important shift driven in part by changing economic and social circumstances, but most centrally, as a result of a shift in the 'mentality' of rule. Second, these ideational and material developments were accompanied by an

¹⁸ [Bracketed: This idea of nationality mapping on to territory; the same idea of territory as property c.f. Ruggie and thus as singular in ownership and jurisdiction seems to map on to the late concern of states to demand exclusive nationality – trend that continues through the high-watermark of the sovereign state. Also: **how can something be imagined part of internal jurisdiction that deeply depends on external coordination? C.f. passport control as example of multilateralism ala Ruggie] Ruggie's question: how do you own something you do not own (especially when it moves)?**

¹⁹ As the historian of modern passport controls John Torpey notes, "[a] person's nationality simply cannot be determined without recourse to documents. As an ascribed status, it cannot be read off a persons appearance." (Torpey: 121)

²⁰ Or put otherwise, they are historically contingent technologies of power.

incredible increase in state capacity and bureaucratic rationalization that allowed states to more effectively realize their sovereign aspirations and to actually produce the notion of nationality. Together these coeval and mutually reinforcing developments provided both the rationale and ability for states to introduce the mechanisms of border control and boundaries on membership necessary for statelessness to emerge. The third and final element concerns the mutual integration of norms of membership and exclusion into an organized state system. It was only in this final stage that norms of nationality, immigration control and deportation came to take form at the level of a nascent international society, paving the way for the emergence of mass statelessness in the context of interwar Europe.²¹

2. The Birth of Population

As noted above, a crucial condition of statelessness that Arendt's account misses is the transformation of the relationship between the state and those subject to its political authority. The possibility of the exclusions of statelessness resulted partly from the development of a novel form of governmental rationality – one that shifted beyond the traditional conception of sovereign power traditionally associated with the state. This new mode of power - articulated in the work of Michel Foucault under the designation 'governmentality' - is important because one needs a form of power directed at governing a population rather than ruling subjects as a precondition of statelessness. This transformation constitutes a change in the "domain of social epistemes" as John Ruggie has put it - a shift in the collective mentality of societies that would introduce novel imperatives and rationalities into the behavior of state actors.²² Following Ruggie, my suggestion is that the rise of governmentality represents a decisive shift in the "mental

²¹ **Note to Reader: Please forgive the lengthy draft, and if needed or preferred, please consider skipping section II.2-II.4 as this discussion is particularly in need of further work.**

²² Ruggie, *Territoriality and Beyond*, 1993, pp. 171.

equipment that people drew upon in imagining and symbolizing forms of political community.”²³ Thus the emergence of a new “art of government” helped constitute an important transformation in the nature of the state that remains important to understanding the distinctively modern quality of statelessness.

Arendt provides a rich account of the re-emergence of *people power* during the period of the Atlantic revolutions that ushered in modern democracy.²⁴ Indeed, her account of the *Declaration of the Rights of Man* centers on the innovations of the French revolutionaries’ attempt to found a post-Feudal politics that would decisively break with the traditions and hierarchies of the absolutist ancient regime.²⁵ But the development I wish to address is more gradual than explosive, located on the level of mentalities or modes of thought rather than theory. It concerns less the revolutionary reemergence of the people onto the stage of politics and more the process by which the distinctive way the modern state came to see the ‘population’ as an object of study and the ‘populace’ as a subject of intervention.²⁶ Although there were important material dimensions to this process, following John Ruggie, I begin by bringing to the foreground important dimensions of this social epistemic shift that brought about a transformation in relations of government and rule.²⁷

But what makes this concern with population particularly modern? As much of the state formation literature reminds us, states, or rather the rulers of states, have long been interested in

²³ Ibid. Although I follow Ruggie in emphasizing the relationship of social episteme’s to changing material conditions, I shall disagree with the implications of his narrative of the formation of the modern state system. Like others (R-S, Teschke) I see Ruggie’s account as problematic insofar as he collapses the dynastic-absolutist and modern state and international system.

²⁴ Arendt, *On Revolution*.

²⁵ Arendt, *Origins of Totalitarianism*, 290-302.

²⁶ However, in a number of ways Arendt’s account of the “rise of the social” and the consequent colonization of different modalities of the human condition—for instance, the domain of action, such that “politics” is increasingly reduced to “administration”—anticipates and tracks some of Foucault’s concerns.

²⁷ **NB to reader:** Part of the reason this history is so important is that I will stress the continuing of this concern with a population to the management of contemporary statelessness and the modern refugee regime. i.e. the counting of statistics and generation of categories by the state system as a manifestation of power not just a presentation of facts.

the effective extraction of resources from those subject to their jurisdiction. Charles Tilly's telling image of the early modern European state as a 'protection racket' does much to capture the rationale of this imperative - insofar as Tilly connects the goal of establishing consolidated, centralized, and exclusive authority over a territory with the demands of effective war-making.²⁸ But the relationship between the state and its subjects is also central to Hendrik Spruyt's neo-evolutionary study of the rise of the modern state, insofar as he argues that the state was able to more effectively 'penetrate' society for the purposes of international conflict.²⁹ Coupled with its capacity to lower the transaction costs of trade through usurping coercive authority and making credible commitments with other political actors, the early European state was able to 'out compete' other institutional forms such as the city state or city-league.³⁰ Yet as John Torpey has noted, such accounts fail to address how states accomplished this penetration of society.³¹ In order to explain this, Torpey argues we must recognize that the remarkable power and robustness of the modern state lies in its infrastructural capacity. This capacity is grounded in the state's imperative to render the social world "legible" as J. C. Scott has famously put it, leading to a consequent capacity to "embrace" its population through the deployment of techniques of identification. Rather than the mere brute exercise of coercive force, it is through these "humble modalities, minor procedures"—grounded in shifting epistemes and apparently mundane bureaucratic practices—that would provide the grounding and apparent legitimacy for the state

²⁸ Charles Tilly. *Coercion, capital, and European states, AD 990-1992*. Oxford: Blackwell, 1992.

²⁹ Hendrik Spruyt. *The sovereign state and its competitors*. Princeton: Princeton University Press, 1994.

³⁰ Although as Teschke (2003) points out, these materialist accounts remain rather unsatisfying because of the persistence of decidedly non-state forms of political authority both within and at the margins of Europe—namely the Russian, Austro-Hungarian, and Ottoman Empire. It took an additional development in state capacity for the modern state to edge out competing institutional arrangements and this only really happened post-WWI with the evisceration of the remaining European land empires. Note: Torpey misses this as well; not just a matter of infrastructural capacity of state, but changing ways in which the state sees; how did the state come to want or wish to penetrate society? Notable that only when this capacity is fully developed could the state wipe out rivals.

³¹ Michel Foucault also points to the difficulty of such accounts, which rely upon a "circular ontology of the state asserting itself and growing like a huge monster or automatic machine." (SMBD: 354)

system's capacity to enact statelessness.³²

However, while both Scott and Torpey's work are important for understanding the manufacturing of nationality by the state, their respective projects do not address the fundamental question of how and why did the state come to take an interest in its populace as a population. This is a question not raised by Torpey's study because—like Scott—he assumes that this concern of the state has always maintained a stable configuration. Although legibility may be an enduring problem of statecraft, the rational methods and means underlying this project may not be continuous over time.³³ Thus while the pre-modern absolutist and dynastic state may have concerned itself with “arranging the population to simplify the classical state functions of taxation, conscription, and prevention of rebellion” the modern state's aspirations rest on a decisive shift in modes of social regulation and intervention on behalf of the welfare of the population. To push Scott's visual metaphor, if a decisive feature of the state concerns its imperative to render the social world legible to its synoptic vision, the rise of governmentality was a crucial transformation in the nature of that gaze. In doing so, governmentality as a form of power both helped bring into focus a new domain known as society and constituted the novel forms of state intervention for that terrain. Preceding the project of differentiating nationals from non-nationals, the state first had to develop a rationale for identifying its population as such, a project predicated on a shift from ruling over subjects to governing a populace. Before addressing the material conditions of the state's capacity to identify its populace as nationals and

³² Foucault; D&P 170; cited by Torpey: 3;

³³ This points to a rather baffling dimension of Scott's otherwise deeply insightful study. Although Scott (and Torpey) evokes Foucault as an important influence of his approach—as is apparent in the constitutive relationship he draws between power and knowledge—he doesn't sufficiently stress that modes of power shift over time. Scott's model of the synoptic state maps well onto the classical “sovereign” conception of power, but it fails to capture entirely the new mode of power of “governmentality” that Foucault identifies as the hallmark of the modern and contemporary state.

citizens, I will first briefly look at the conceptual shifts that made this enduring project possible.³⁴

3. Governmentality

To reconstruct these conceptual developments I rely upon the notion of ‘governmentality’ employed in Michel Foucault “genealogy of the modern state.”³⁵ Foucault defines governmentally as the “conduct of conduct”— as Tania Li puts it, the “attempt to shape human conduct through calculated means.”³⁶ However governmentality is a distinctive mode of shaping human conduct, not just for particular ‘deviant’ or recalcitrant groups in specific institutionalized contexts as Foucault focused on, but across an entire population.³⁷ This concept is important for understanding statelessness because the rise of governmentality tracks a number of “social epistemic shifts” that shaped and transformed the development of state capacity in relation to those subject to its authority.

Foucault’s analysis of governmentality has received increased attention since the publication of his lectures at the *College De France* in the 1970s and has become the subject of a wide-ranging literature both elaborating Foucault’s account and deploying the notion of ‘governmentality’ in novel contexts.³⁸ However, there are two implications of Foucault’s approach to theorizing the distinctively *modern* state through the study of governmentality that I wish to stress. First, Foucault’s approach emphasizes the “reciprocal constitution of power

³⁴ In the current draft of this chapter I rely upon Foucault to develop this account, I suspect that I may have to re-work this section in light of my subsequent normative section.

³⁵ Security, Territory, Population: 354.

³⁶ Cite Foucault; Tania Murray Li, 2007, pp. 275.

³⁷ This is what differentiates the notion of governmentality from the idea of discipline developed in Foucault’s earlier work.

³⁸ While interest in governmentality in the Anglo-American world was initially nourished by the release of *The Foucault Effect: Studies in Governmentality*, the subsequent release and translation of Foucault’s lectures in their entirety has significantly contemporary engagements with his work, as well as provided grounds for criticizing earlier appropriations of his thought. My reading of Foucault draws considerably on the interpretive work of Thomas Lemke. See: "Foucault, Governmentality, and Critique" (2010); "The birth of bio-politics": Michel Foucault's lecture at the Collège de France on neo-liberal governmentally" (2010); "An indigestible meal? Foucault, governmentality and state theory" (2011).

techniques and forms of knowledge and of regimes of representation and modes of intervention” – that is, the way in which ‘social epistemes’ and power relations are mutually conditioning.³⁹ The larger insight that knowledge claims are inextricably linked to relations of power has gained broader currency with the post-positivist turn.⁴⁰ However, Foucault pushes this observation further—he suggests that new forms of knowledge can themselves call into being novel modalities of power, with the modern ‘art of government’ oriented toward the welfare of the population being a central example.⁴¹ Indeed, Foucault’s broader claim – grounded in what the philosopher Ian Hacking has referred to as ‘dynamic nominalism’ – is that through the very creation of categories constituted by knowledge claims, new modes of action and possible ways of being are themselves brought into existence. Knowledge is thus not only implicated in structures of power, but is part of the constitution of subjects through the descriptive categories it brings into being.⁴² The upshot of this, as one commentator has put it, is that within the framework of governmentality it is “not possible to study the technologies of power without an analysis of the political rationality underpinning them.”⁴³

The second implication of Foucault’s analysis of governmentality is a distinctive characterization of the nature of power. Following his turn to the study of discipline as a mode of social control, Foucault called attention to the need to “abandon the juridical model of sovereignty”— as the sole model for conceptualizing relations of power, especially in its modern

³⁹ Lemke (cite)

⁴⁰ This post-positivist view is well captured by Robert Cox's observation that ‘[t]heory is always for someone, and for some purpose.’ (1981)

⁴¹ I follow Lemke (2002-FGC) in stressing these elements. As Foucault himself puts it in one formulation, “by ‘governmentality’” I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow for the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and security as its essential technical instrument.” (108)

⁴² See Hacking (MUP) Lemke, (FGC, 8). The upshot of dynamic nominalism is that the conditions of possibility for various actions, identities and ways of being are themselves constituted and dissolved through the invention or deployment of new modes of classification and categorization.

⁴³ Lemke (IM, 2)

and contemporary forms.⁴⁴ For Foucault “cutting off the king’s head” as part of re-conceiving the nature of power required two important reorientations. On the one hand, Foucault’s account of power avoids the assumption that the “macro perspective of the state” should be the only focal point of analysis or that coercive law is the primary mechanism through which power is exercised. As noted above, by stressing the mutual implication of power and knowledge Foucault draws our attention to how power is constituted by disciplinary practices on the micro-level and by diffuse discourses seemingly distant from state authority. The other reorientation is that Foucault counters the merely ‘negative’ or ‘repressive’ view of power implicit in the juridical model by emphasizing the productive, creative, and generative, possibilities of power relations. This importantly captures that, contra the juridical model, exercises of power do not merely forbid or constrain the possible actions of agents—as is implied within the Hobbesian characterization of the state, where law and freedom are counterpoised.⁴⁵ This does not mean that Foucault rejects the idea that power is exercised through coercion and violence, but that this represents only one aspect of power relations. Foucault’s adoption of dynamic nominalism implies that another important dimension of power is its positive role in the production of new possibilities of action and forms of subjectivity, often through the discursive creation of new classifications and categorizations.

Taking up Foucault’s perspective enables us to see how it was only because of the emergence of an ‘art of government’ concerned with measuring a population whose welfare the government sought to promote that the state could come to both produce, and then render salient,

⁴⁴ (Foucault, *SMBD*: 265)

⁴⁵ I cannot pursue this now, but more should be said about the way in which Foucault’s critique of juridical power maps onto the neo-republican critique of ‘gothic’ freedom.

the category of nationality.⁴⁶ In explaining the relevance of governmentality to producing the conditions of possibility for statelessness I will focus on three important events that precipitated this:

1. the emergence of society as a distinct domain and object of study,
2. the development of a stochastic worldview or social episteme, and
3. the understanding of ‘population’ that these changes engendered.⁴⁷

By focusing on these elements I hope to explain what John Torpey refers to as the “documentary revolution” that occurred in the late Nineteenth-century as the state sought to supplement its newfound interests through the deployment of material technologies and techniques of identification.

4. The Uncovering of Society

The first major shift that would reconfigure the relationship of the state to those subject to its authority is the early modern establishment of society as a distinct domain governed by its own logic and rules. This novel conceptualization of an area neither fully within the public power of the state nor entirely within the private sphere was related to shifting social and economic relations – most obviously the ascendance of commercial society and capitalistic market relations – as well as their theorization through the nascent project of political economy.⁴⁸

Here I can only offer a terse sketch of this far reaching development, so carefully analyzed by Karl Polanyi in *The Great Transformation*, in order to highlight the notion of society that

⁴⁶ This point is just Torpey’s point about the production of nationality; nationality must be inscribed on a population.

⁴⁷ The focus on these elements is far from arbitrary, but an attempt expand on Foucault’s own suggestion that it was the conjunction of these developments that was necessary to “unlocking the art of government” and the emergence of governmentality. (STP; 104)

⁴⁸ One of the most influential early modern theorists to argue for the notion of society as an autonomous domain was the Dutch born Bernard Mandeville - whose thought serves as a useful exemplar of this new notion. Though denying Mandeville status as an insightful social theorist, Polanyi’s credits him for hitting on “the basic elements of the new political economy” that would help engender the discovery of society. (Polanyi: 114)

accompanies the novel form of power discussed in Foucault's work on governmentality.⁴⁹ Polanyi's study is more broadly concerned with the catalysts and conditions of the rise of modern market society and the subsequent colonization of social relations by the logic of the market. Here I wish to merely connect his account of what he refers to as the 'discovery of society' to highlight the relationship between society and state that preceded the emergence of statelessness.⁵⁰

Polanyi's groundbreaking analysis of the rise of modern market society tracks the contradictory logics expressed by classical liberal doctrine - the dominant ideology in both political and economic relations in the era preceding mass statelessness. His account helps shed light on one of the paradoxes of the emergence of statelessness in the interwar period noted at the outset of this chapter - that it was preceded by an era in which Europe had witnessed one of the most open and unconstrained border regimes amidst a broader disengagement of the state in social and economic relations. Part of this puzzle is the product of the apparent shift from the interventionist cameral or mercantile policies that had dominated state-society relations to the doctrine of *laissez faire* liberalism, with its emphasis on the freeing up of market relations as

⁴⁹ Polanyi's may seem like an odd interlocutor in a discussion of governmentality. But Polanyi's analysis clearly anticipates aspects of Foucault's account, although the latter seems to not draw on *The Great Transformation* in his lectures on governmentality. I cannot discuss these connections in full here but Polanyi's clearly expresses the insight that the rise of economic liberalism and the early 20th century state-economy relation was not constituted by a withdrawal of state power, but reconfiguration of how that power was exercised. Indeed, Polanyi's account tracks a how the state took up a non-judicial and 'productive' model of power as freedom; this is well captured by the shift from a mercantile logic of intervening to "enabling" the logic of classical liberalism, focused on "freeing up" the market. Yet the intensification of state capacity could be concurrent with an ideology of non-intervention, as Polanyi's notes, "There was nothing natural about laissez-faire; free markets could never have come into being merely by allowing things to take their course." (Polanyi: 145) Moreover, on a broader methodological level Polanyi approach shares some affinities with the 'genealogical' method that characterizes Foucault's work on governmentality, insofar as Polanyi's account of the emergence of the market shows market society as a contingent and historical development linked up with the emergence of political economy as a form of knowledge. Indeed, a central task of Polanyi's project, contra liberal economic theory, is to thoroughly denaturalize the market and thus critique the rise of market society.

⁵⁰ Polanyi's project seems to precisely concerned with the colonization of the 'life-world' with market logic; that is, the advent of market society "means no less than the running of society as an adjunct to the market: instead of economy being embedded in social relations (as in the past), social relations are embedded in the economic system." (Polanyi: 57)

well as cross border movement. In Polanyi's account we can see that far from a period of state disengagement from society and the market, the era of classical liberalism was in fact a dramatic reconfiguration of these relationships. The catalyst for this transformation was the 'discovery' by the nascent discipline of political economy of the "the existence of society that was not subject to the laws of the state, but, on the contrary, subjected the state to its own laws"⁵¹ (KP:116) The uncovering of this apparently autonomous domain would precipitate an important shift in the way the state would relate to those subject to its authority.

Although Polanyi's account is much more sophisticated, it is enough to stress that this discovery led to the inauguration of the classical liberal paradigm with the concomitant goals of 'freeing' the self-regulating market from legislative constraints and the related intensification of attempts to erode restrictions on labor mobility, both within and beyond national borders. Indeed, as Polanyi notes, the shift toward the creation of a novel market system and the introduction of hitherto unheard of labor mobility were linked projects. As he observes, the uncovering of society as an autonomous domain meant that:

[t]he self-regulating market was now believed to follow from the inexorable laws of nature, and the unshackling of the market to be an ineluctable necessity. The creation of a labor market was an act of vivisection performed on the body of society by such as were steeled to their task by the assurance which only science can provide.⁵²

Yet contrary to the presentations of classical political economy, and indeed of contemporary neo-liberalism, the rise of laissez-faire policies constituted the obverse of a withdrawal of the state. To be sure, economic policies under classical liberalism were characterized by the apparent rejection of the principles and practices that had characterized mercantile and cameralist policies aimed at protectionism and the steering of national economies through explicit state intervention.

⁵¹ Polanyi 116

⁵² Polanyi 132.

But as Polanyi's project demonstrates, state policies in the mid-19th century were directly implicated in the forceful implementation of a new social order—indeed, “[e]conomic liberalism was the organizing principle of society engaged in creating a market system.”⁵³ For reasons Polanyi details in his account, this enterprise combined the abolishment of certain modes of regulation with the unprecedented development and deployment of novel forms of state intervention.⁵⁴ As he writes,

the introduction of free markets, far from doing away with the need for control, regulation, and intervention, enormously increased their range. Administrators had to be constantly on the watch to ensure the free working of the system.⁵⁵

Thus the moment of economic liberalization of the long 19th century described by Polanyi was an era in which the state, far from withdrawing, intensified interventions within both economic and social relations, albeit through different means than before. The result was a rapid growth in the state's control of society. Indeed, the idea of a market that had to be ‘freed’ and allowed to operate according to its ‘natural’ logic emerged as state policy makers began to understand themselves as bound to intervene in ‘society’ - that distinct body that had suddenly emerged as a unique domain of study – through novel means that account for the newly discovered social laws.

Concurrent with the institutionalization of market society, there emerged a distinctively modern view of human behavior as characterized by statistical regularities. This view introduced the novel idea of “laws of society” operating on the level of the population and subsequently

⁵³ Polanyi (Cite check)

⁵⁴ As Polanyi writes, “The thirties and forties saw not only an outburst of legislation repealing restrictive regulations, but also an enormous increase in the administrative functions of the state, which was now being endowed with a central bureaucracy able to fulfill the tasks set by the adherents of liberalism” (Polanyi, 145)

⁵⁵ Polanyi, 147.

reoriented the state's concern with its citizens qua members of that body.⁵⁶ Here I follow Foucault in seeing the ‘birth of population’ as an important development in this change. For Foucault, this tracks the shift toward distinctively modern forms of power not grounded on the relationship of coercive rule of the sovereign to subjects, which could still be said to characterize of the mercantile and cameralist state, to a more differentiated concern with the production of the welfare of the population.⁵⁷ As Foucault puts it:

population is not, then, a collection of juridical subjects in an individual or collective relationship with a sovereign will. It is a set of elements in which we can note constants and regularities even in accidents, in which we can identify the universal of desire regularly producing the benefit of all, and with regard to which we can identify a number of modifiable variables on which it depends.⁵⁸

Following Foucault, I suggest that the development of a specific concern with population was necessary for the emergence of governmentality as a distinctively modern form of power. This shift—coeval with the discovery of society outlined by Polanyi—would prove the catalyst for the state’s growing interest with documenting and categorizing its subjects, as well as the creation of institutions capable of realizing these ends. The unique investment and growth of the infrastructural power of modern governments resulted in this shift in the interests and capacities of states. By emphasizing this connection, I am suggesting that a state that governs its population—rather than ruling its subjects—is a precondition of statelessness that only emerges fully at the cusp of the 20th century, which explains the belated appearance of the phenomenon of mass statelessness.

Of course, it is true that states have long been interested in rendering those subject to

⁵⁶ The erosion of a mechanistic and deterministic worldview arguably might be tied to shifting views in the operation of political authority – think of the role of a mechanistic worldview in the work of Hobbes; such a view of causality seems entirely appropriate for the forms of social control embodied by a this traditional view of sovereignty

⁵⁷ Foucault, STP: 70.

⁵⁸ Foucault, STP 74.

their jurisdictional claims “legible” to state authorities, thereby “arranging the population to simplify the classic state functions of taxation, conscription, and the prevention of rebellion.”⁵⁹

Yet the European state of the 19th century went through an important transformation that is hard to understand as continuous with earlier processes of state formation, primarily because this tracks a shift in the concern of state officials not merely with the extraction of resources but with the welfare of the population. As James Scott notes, the 19th century was marked by a fundamental transformation of the state’s role in relation to society:

Before then, the state’s activities had been largely confined to those that contributed to the wealth and power of the sovereign... The idea that one of the central purposes of the state was the improvement of all the members of society—their health, skills and education, longevity, productivity, morals, and family life—was quite novel. There was, of course, a direct connection between the old conception of the state and this new one. A state that improved its population's skills, vigor, civic morals, and work habits would increase its tax base and field better armies; it was a policy that any enlightened sovereign might pursue. And yet, in the nineteenth century, the welfare of the population came increasingly to be seen, not merely as a means to national strength, but as an end in itself.⁶⁰

An important factor for this development concerns what Ian Hacking has called “the taming of chance” - that is, a wider social epistemic shift to a stochastic worldview through which “society became statistical.”⁶¹ This is analogous to the discovery of society outlined above, but is broader insofar as it concerns how the uncovering of statistical laws in social phenomena inaugurated a larger conceptual shift away from the faith in determinism that had characterized much of post-enlightenment thought and made available new modes of social control. As Hacking points out, the gradual embrace of a decisively non-deterministic universe was paradoxically compatible with far greater degrees of state intervention, as it became possible to conceptualize social phenomena across populations as both expressing ‘natural’ statistical trends but also as amenable

⁵⁹ JC Scott. *Seeing Like a State*, 2.

⁶⁰ JC Scott. *Seeing Like a State*, 91.

⁶¹ Ian Hacking, *Taming of Chance*, 2.

to transformation.

This implication of statistics as a novel epistemic framework and the transformation of state power is revealed by the terminological root of the term ‘statistics’ itself, which is derived from the word for state. Indeed, Gottfried Achenwall, the individual who first coined the term, defined statistics as a collection of “remarkable facts about the state.”⁶² Thus while many within the social sciences continue to understand the quantitative approaches enabled by the development of statistics as the pinnacle of objective and neutral analysis, the origins of this seemingly normatively neutral discipline reveal its early implication in state formation and statecraft. As Dipesh Charabarty notes in this regard, “[t]he systematic collection of statistics in detail and in specific categories for the purposes of ruling seems to be intimately tied to modern ideas of government.”⁶³ Far from representing a normatively neutral project, the statistical revolution in the first half of the 1800’s triggered by what Hacking describes as an “avalanche of numbers” helped bring into being new interests in controlling and attending to the welfare of individuals now understood as part of a population.⁶⁴ Thus the increased role of statistics in state practice developed along two dimensions. On the one hand, statistical knowledge and with it the capacity of the state to intervene within society represented a novel tool of social control. The body of data that the statistical turn helped assemble facilitated forms of control that simply did not exist before. But on the other hand, the compiling of huge bodies of data about populations drove also drove the development of state policy, as the existence of increasingly large bodies of

⁶² Ian Hacking, *Taming of Chance*, 24.

⁶³ Dipesh Charabarty, *Provincializing Europe*, 84.

⁶⁴ Here Hacking’s insight into the notably modern notion of ‘normal’ is helpful. The broad and intensified collection of demographic details by state officials continued to reveal the apparent presence of statistic regularities or laws that governed social phenomena across a population of individuals. This apparently objective observation thereby provided a rubric of ‘normal’ behavior grounded in the observation of a statistical average. Yet the distinction between description and proscription is unstable - for the idea of such statistical laws also enabled the conceptualization of normal in the proscriptive sense, and with that, of the notion of deviant populations potentially capable of reform or regeneration.

data made data-driven approaches to toward population all the more attractive, simply because such information exists.

Together this constellation of factors—the discovery of society, the birth of population, and the invention of statistics—helps explain the fundamental shift toward governmentality as a form of power characteristic of the modern state. As Foucault tells us,

thanks to the perception of the specific problems of the population, and thanks to the isolation of the level of reality we call the economy. . . it was possible to think, reflect, and calculate the problem of government outside the juridical framework of sovereignty. And the same statistics, which, within the framework of mercantilism, had only ever been able to function within, and in a way, for the benefit of a monarchical administration that itself functioned according to the form of sovereignty, now become the main technical factor, or one of the main technical factors, in unblocking the art of government.⁶⁵

This point is echoed by Scott who connects the emergence of statistics with the rapid broadening of the scope of intervention and aspirations of engineering whole societies:

One essential precondition of this transformation was the discovery of society as a reified object that was separate from the state and that could be scientifically described. In this respect, the production of statistics about the population—its age profiles, occupations, fertility, literacy, property ownership...allowed state officials to characterize the population in elaborate new ways.⁶⁶

The conjunction of the discovery of society as a separate domain subject to its own laws, the emergence of statistics, and the shift to a concern with the welfare of the population, together led to the emergence of governmentality as a mode of relating individuals to political authority. The constellation of these factors provides part of the explanation of the distance between early European state formation and the much later appearance of mass statelessness. In the next section, I will turn to another factor in the emergence of statelessness at the particular historical moment in which it appeared.

⁶⁵ Foucault, STP [check cite?]

⁶⁶ JC Scott. 91.

III. The Advent of the Age of Documents: Inscribing Nationality

The key to understanding the appearance of statelessness in the period between the two World Wars, lies in the internationalization of documentary controls among states. Only with the institutionalization on an *interstate* level of the distinction of citizen and other could statelessness coalesce in the distinctly modern form that concerns this project. In this section I trace the emergence and consequences of the events leading up to this development. The salience of this story is manifold, for such proceedings both constitute the conditions of possibility of modern statelessness, while also providing the originally unintended framework for the beginnings of international refugee law and our contemporary refugee regime as well as legitimating the prerogative of states to control entrance and membership in the name of sovereignty.

Before unpacking the structure of these events, it is important to briefly stress the unprecedented nature of the practices that suddenly appear at this juncture. I locate this novelty on two levels. First, we need to appreciate the difficulty and with that the array of material and institutional conditions necessary to produce and sustain the very category of nationality as a legal status and identity. In doing so we can come to appreciate the degree to which nationality was historically institutionalized by state practices through the process which John Torpey has appropriately called the “*révolution identificatoire*” of the late 19th and early 20th century.⁶⁷ The point is not merely to recognize that the notions of nation and co-national are relatively recent historical formations, but that the stabilization of a distinction between citizens and foreigners requires considerable bureaucratic and institutional investment. Second, I want to emphasize the novelty of the conjunction of border control, nationality and state sovereignty. Far from forming

⁶⁷ Torpey, *The Invention of the Passport*. 121

a timelessly self-evident triad, these three elements only recently came to take on their current appearance at the end of the 19th century, spreading and taking concrete form shortly thereafter. We can come to appreciate this by observing just how inchoate and under-defined these practices were at their inception.

The challenge of instituting our modern notion of nationality rests on its thoroughly socially constructed and institutionally constituted character. This feature of nationality can sometimes be obscured by the apparent grounding of such claims in a primordial conception of the ethnos or nation. Indeed, the coeval development of national identity and nationalism as a powerful ideology led contemporary observers, whether liberal defenders of Wilsonian self-determination or authoritarian state builders to present the former as merely the natural extension of the latter. But as we shall see subsequently, distinctions of national identity must be thoroughly institutionalized both to be constituted and sustained. It is true that a number of scholars have drawn important attention to the material and historical developments that contributed to the rise of nationalist ideology in the 19th and 20th century. Thus Karl Deutsch (1953) has explored the conditions that encourage the development of national consciousness by emphasizing the role of intensified communication to processes of assimilation and mobilization that helped constitute a sense of national identity. More recently, Benedict Anderson (1983) has pointed to the central role of print-capitalism to enabling the imagined community of the nation to come into being, both by allowing an increased awareness of co-nationals, raising vernaculars in cultural prominence, and through helping stabilize a new sense of simultaneity necessary to support the perceived commonalities of such communities.⁶⁸

⁶⁸ On another level, J.C. Scott has drawn our attention to the long-running interest of political authorities in the use of identity to grasp their subjects; even the innovation or invention of permanent and inherited patronyms can be attributed to such state-building projects. (Scott: 65-7)

But while such accounts provide much potential insight into the conditions that enabled and encourage the rise of nationalism as an ideology, they do less to help us understand nationality as an institutionalized practice of individual identity. This is important because, as John Torpey has noted, “[i]n the absence of telltale markers such as language or skin color - which are themselves inconclusive as indicators of one's national identity, of course, but which nonetheless frequently have been taken as such - a person's nationality simply cannot be determined without recourse to documents. As an ascribed status, it cannot be read off a person's appearance.”⁶⁹ Nationality in these sense must and only can be produced through the introduction by states of documentary controls in conjunction with the demanding creation of a bureaucratic machinery capable of sustaining such distinctions. Thus “beyond communicating definitions and categories concerning identity, states must implement these distinctions and require documents to do so.”⁷⁰ The status of national citizenship therefore had to be effectively institutionalized in order to have the exclusionary role we associate with it today.

The claim that national identity is a historically constituted project or socially constructed artifact, while important to emphasize, should strike most readers as far from radical. Such an insight is anticipated by the broader project—undertaken by Deutch, Anderson and others – to offer an anti-essentialist and historicist account of nationalism. Moreover, over the course of the past several decades such a perspective has become generally accepted within the social sciences. What is perhaps more striking is how relatively recent the role of documentary controls of nationality have played in both the transversing of state boundaries and membership.

On the one hand, the very idea of states possessing a prerogative to control migration across borders remains a relative recent development. As noted at the onset of this chapter, the

⁶⁹ Torpey, *The Invention of the Passport*. 121

⁷⁰ Torpey, *The Invention of the Passport*. 12

early modern European state simply did not view migration control as within the ambit of its interests. As John Torpey tells us,

Most familiar to and accepted by people today is the right of states to control entry, a prerogative that has come to be understood as one of the quintessential features of sovereignty. It is important to note, however, that the widespread recognition of this prerogative is a fairly recent development.⁷¹

Prior to the late 19th century various forms of seasonal labor migration as well as permanent migration flows took place across Europe with little regard for national borders.⁷² Thus large numbers of migrants of the 19th century crossed national frontiers without requisite documents.⁷³ These patterns of migration, emigration and migration were not only largely unregulated by states, but also constituted the largest historical movements of people both within and out of Europe. As one commentator has put it, “the close association between citizenship and identity papers that we take for granted today was not enforced until the 20th century.”⁷⁴ Border control therefore represents a distinctly modern phenomena. Striking evidence of this fact is to be found in the relatively late articulation of a juridical basis of state control over immigration policy, which in fact did not emerge on the European continent, but across the Atlantic in the colonial settler states of the United States and Canada.⁷⁵ Not only do these legal rulings take place in the setting of the ‘new world’ but they rely on largely fictitious claims about the realities of migration control exercised by European states. Despite their somewhat dubious foundations,

⁷¹ Torpey, *The Invention of the Passport* 159

⁷² Moch: 2003 - check cite;

⁷³ Groebner: 234

⁷⁴ Groebner: 237.

⁷⁵ *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892), cited in Nafziger, 1983. Find Canada case for local flavor (*Cain?* 1900s – ask Carens)

these court rulings have played an important role within international law in helping stabilize and legitimate contemporary border-control practices.⁷⁶

On the other hand, the fusion of state sovereignty, documentary controls, and nationality also remains a recent event. As noted above, states need to first develop elaborate institutional arrangements—grounded in a more general concern with their populations—in order become capable of drawing distinctions between nationals and foreigners. This process of bureaucratic rationalization remained uneven and its implications for norms of border control considerably underdetermined. This is illustrated in the inchoate nature of both early ‘passport’ measures and deportation practices.

Although rudimentary documentary controls did exist in early modern Europe - these largely descended from older traditions of safe passage documents. Rather than vouchsafing the nationality of individuals, such documents originally attested to a claim to the king’s protection, acting as a deterrent to the actions of both non-state and state sanctioned predatory actors.⁷⁷ The difference between such documents and modern passport controls is captured by their mode of issuance, as well as their consequent ineffectiveness in substantiating either identity or nationality.

Indeed, when implement passport practices of the late-19th century frequently relied upon the issuance of travel documents of the country of entry, rather than of that of ones nationality.⁷⁸ The divergence from contemporary practice - where a right to a passport is premised on the possession of national citizenship and grounds the basis of entitlements to

⁷⁶ As Nafziger notes, “In quick succession after *The Chinese Exclusion Case*, the Supreme Court delivered two further opinions, *Nishimura Ekiu v. United States* and *Fong Yue Ting v. United States*, which largely completed the elaboration of judicial doctrine, not only for the United States but for much of the modern world.” Nafziger, *The General Admission of Aliens under International Law*, 826.

⁷⁷ Salter- Passport and IR, 12-13

⁷⁸ Groebner 234

diplomatic and consular protection while abroad - are manifest: the pre-modern passport established only the most tenuous relationship between the bearer and their state of origin. Such documents were also decentralized in their administration and poorly enforced, leading to their relatively easily illicit duplication and circumvention.⁷⁹ Moreover, the non-existent and subsequently limited access to photography made such documents ineffective as mechanisms for substantiating the identity of their possessors. Indeed, far from tracking nationality such documents provided a far greater constraint on mobility on class-based grounds, facilitating relatively ad-hoc and arbitrary movement restrictions on those deemed members of the mobile poor. Indeed, in some sense the so-called passport of the 18th century was not an identity document in the conventional sense, but a rank or social status document that distinguished the nobility from their subjects.⁸⁰ This association with social station rather than nationality in part explains the frequent association in their era of the passport with the injustices of the *ancien regime* feudal order.⁸¹ As we shall see, this association of mobility restrictions and feudal domination in part explains the waning enforcement of passport controls during the 19th century, given their negative associations in a period of prevailing liberal sentiment.

The absence of a consistent linkage between nationality and border control can also be seen in the expulsion policies of states in the period preceding the development of modern passport controls. A central dimension of such policies concerned the ability of expellees to choose their border of expulsion. Under such procedures, individuals were generally provided with the option of what frontier they would be deported across, in part as a result of the influence

⁷⁹ Groebner 234

⁸⁰ Groebner 227.

⁸¹ Thus Torpey tells us "Passport controls, in particular, had been a vital mechanism of domination under the old regime in France, and were clearly regarded as such by those who made the revolution there in the late Eighteenth century." Torpey: 21; See also Groebner: 228

of a dominant liberal ideology stressing individual freedom. From such evidence Frank Caestecker concludes that this widespread phenomenon “demonstrates the lack of importance attached to nationality in the nineteenth century” insofar as the import of being returned to ones country of origin was far from a self-evident dimension of exclusion policy.⁸² Indeed, concerted efforts to subsequently rationalize such removal procedures on the basis of nationality were only undertaken through diplomatic agreements as late as the last decade of the 19th century.⁸³ However, the development of consistent deportation policies was, ironically, hampered by the limited capacity of states to identify the nationality of individuals. Without the further development of a coordinated and international passport regime, determining the citizenship of individuals remained an elusive task. As Caestecker notes,

The main difficulty in implementing these new deportation procedures was that the nationality of the expellee had to be clearly established in order to determine where they had to be expelled to. The mere attribution of nationality turned out to be extremely troublesome. During the sometimes long diplomatic negotiations to determine the nationality of undesirable aliens, they remained in the charge of the state which wanted to expel them.⁸⁴

This suggests that the association that we take for granted between territorial sovereignty, nationality and border control would only come to take concrete form with the expansion of the state’s desire and capacity to regulate migration. This in turn would require intensified coordination between states, paradoxically suggesting that realizing the rights we now associate with sovereignty in fact depend upon a recognition of the limits of individual states to assert control of their borders.⁸⁵ In this respect, the deployment of border coercion along national

⁸² Caestecker 123.

⁸³ Caestecker 127.

⁸⁴ Caestecker 128. Compare the somewhat anachronistic account of Paul Weiss, *Nationality and Statelessness in International Law*, 46. Weiss seems to not consider that it was precisely the nascent and uncoordinated status of such norms that would require a state to employ internment prior to negotiating the terms of expulsion.

⁸⁵ Such coordination on the deportation front would have to wait till the 1925 *Havana Convention on the Status of Aliens*, c.f.

frontiers is a collective enterprise of the state system, a theme that we will return to in the final section of this chapter.

1. Inventing the modern passport

To understand the growing ability of states to regulate movement on the basis of nationality we must turn to the technology most important to this innovation—the modern passport system. John Torpey, the most comprehensive historian of these developments has emphasized the centrality of passport controls, going so far as to suggest that they form an essential dimension of the ‘stateness’ of contemporary states.⁸⁶ Here I draw primarily on his rich and largely unrivaled scholarship on the emergence of the modern passport system in order to offer a brief but necessary account of these developments.

The aim of Torpey’s project is to explain state monopolization of the legitimate means of movement - that is, how state’s came to distinguish between citizens and outsiders and consequently regulate the movements of both subjects and foreigners. This process has been central to the formation of the modern state. This is because, according to Torpey, states must be capable of ‘embracing’ their populations in order to effectively extract resources - whether in the form of revenue, labor, or conscripts - in order to reproduce themselves over time. Identity documents and the organizational mechanisms necessary to implement them proved to be a central part of this project. However, Torpey notes that only recently have states gained the capacity to monopolize the authority to regulate movement, a process dependent on the development of elaborate bureaucracies, modern technologies of data, and the deployment of effective documentary controls. The earliest parts of this processes can be traced back to the age

⁸⁶ Torpey, 3.

of absolutism, leading up to an important juncture following the First World War, where our contemporary passport regime became a permanent reality.

Torpey's account of the modern state's drive to monopolize the power to authorize movement is in part also an account of the stripping of private entities and agencies of their means of control over movement, through such mechanisms as slavery or serfdom. According to Torpey, the distant origins of current passport controls lie in absolutist Europe. But importantly, these earlier attempts to restrict movement were generally viewed as an internal matter of specific states and tended to track distinctions of class or status, allowing authorities to distinguish between the nobility and their subjects, while allowing for the curtailment of the movements of the latter.⁸⁷ Moreover, such assertions to regulate the movements of subjects frequently represented more an aspiration or claim of state agents than expressing concrete capacity. There was thus a sharp disjuncture between the aspirations of ancient regime polices that claimed to submit the movements of subjects to the sight of a omnipotent and centralized absolutist administration and the more complicated reality of matters during the period running from the sixteenth to the early nineteenth century. Groebner notes, during this time, the absolutist state's "all embracing claim to control" coexisted alongside "patchy and contradictory policies" that left such aims largely unrealized in fact.⁸⁸ In Torpey's presentation, the French Revolution represents an important though complex and ambivalent juncture in the development of passport controls. On the one hand, it was in the context of the French Revolution that prior movement restrictions, associated with the domination and arbitrary power of the ancient regime, were abolished. Indeed, freedom of movement was enshrined as primary "natural and civil right" in the Constitution of 1791 – a right that was principally extended not only to citizens of the

⁸⁷ Groebner: 227.

⁸⁸ Groebner: 227.

republic, but to foreigners and émigré alike.⁸⁹ However the tumultuous context of the revolution left these freedoms short-lived – as Torpey tells us, a degree of passport controls were reintroduced at the departmental level and by the summer of the same year policing forces were given the bureaucratic task of implementing passport and documentation checks, with the requirement for those entering France to hold or acquire a passport on arrival entering force the year after.⁹⁰ Yet the Revolution's emphasis on freedom of movement did anticipate larger transformations across Europe that would develop in the wake of the ebbing of French expansionism.

Indeed, following the Congress of Vienna and the conclusion of the continental hostilities of the Napoleonic wars, an era of unprecedented mobility and free movement began to unfold. During this period of relative peace a broad relaxation of intra-continental controls over movement was supported by the prevailing spirit of economic liberalism that began to take hold across much of Western Europe. While capitalist industrialization and technological innovations in transportation played an important role, Torpey's account stresses the centrality of classical liberal ideology in driving these developments. On the one hand, this vision contributed to the gradual dismantling of internal mobility restrictions associated with the ancient regime orders, in part because of the dynamics unleashed by the creation of national labor markets as well as the increasingly untenable notion of tethering individuals to the land. On the other, the liberal emphasis on the mobility of goods and individuals went further than merely dismantling feudal restrictions, leading to a broader age of free movement within Europe. As Torpey notes,

These developments came together under the ideological aegis of economic liberalism, which however held no strong brief for the sanctity of national borders. The result of this

⁸⁹ Torpey, 29.

⁹⁰ Torpey, 30-31.

extraordinary conjuncture was that passport requirements fell away throughout Western Europe, useless paper barriers to a world in prosperous motion.⁹¹

Yet this was an ambivalent moment—for while the salience of nationality and of national borders for the movement of individuals was greatly diminished this did not in fact represent a withdrawal of the state. Indeed, as we have noted above, the era of liberalism was one of increased state interventions. In Torpey's account part of this shift was constituted by a turn away from attempts to manage documentary controls on movement toward the documentary substantiation of identity.⁹² The point here is not that state investment in the bureaucratic mechanisms necessary for surveying populations and monitoring individuals diminished during this time, but that such mechanisms did not hinge on matters of nationality or national citizenship. Indeed, under the sway of economic liberalism and confronted with unprecedented innovations in the speed and accessibility of the means of mobility, much of the continent embraced a spirit of 'laissez-faire' labor migration, going so far as to dismantle or let fall into neglect earlier passport mechanisms.⁹³ An unprecedented degree of mobility both within and between states thus took hold over late 19th century Europe, one perhaps without parallel until the implementation of the contemporary Schengen area of the European Union almost a hundred years later.

This period of relatively free immigration and mobility came to an abrupt halt at the end of the long nineteenth century. The decades that followed witnessed the rapid and permanent emergence of highly restrictive practices of border control and migration. As Leo Lucassen tells us, "1914 is generally considered as the end of the free labor migration regime" which had

⁹¹ Torpey: 92.

⁹² As Torpey tells us, "states' insistence that they be able to embrace mobile populations resulted in a heightened preoccupation with identification documents that allowed governments and police forces to establish who (and 'what') a person was when they wished to do so." (Torpey: 92)

⁹³ Torpey, IP, 77.

allowed for free the free movement of both people and capital across national borders. There were some important omens of this momentous shift. Notably, the two *fin de siècle* North American legal precedents mentioned above signaled a notable change in the perception of state authority to regulate migration and entrance.⁹⁴ More importantly, the turn of the century also saw the emergence of nascent ‘offshore’ visa procedures administered by consular officials at an emigrant’s point of departure, a development that would soon become a ubiquitous feature of twentieth-century migration controls.⁹⁵ Indeed, while an era of free movement, this was also the age in which state capacity and interest in documentary identifications greatly expanded. However, the most noteworthy catalyst for the rise in the salience of national identity to individual mobility and well-being was the sudden outbreak of the first world war. Thus while there are antecedent phenomenon, “the ‘Great’ War’ generally stands out as the major watershed” among scholars of migration, marking a critical turning point in state involvement in cross-border movement.⁹⁶

As hostilities within Europe rapidly unfolded, so too did the deployment of passport controls and documentary surveillance more broadly. Whether aimed at discouraging desertions or preventing enemy infiltration, European states brought their by-now consolidated and comparatively vast bureaucratic capacity to bear on the control of movement within their territories, understood initially as a temporary wartime measure. Yet the implications of this

⁹⁴ These judicial rulings heralded an end to an era of relatively unrestricted north American immigration, particularly in the case of the United States, and anticipated the implementation of thoroughly racist policies (US, 1882—later Southern and Eastern Europeans, East and South-East Asians in 1924; Canada, 1923) aimed at curbing unwanted immigration from China on the basis of ethnic quotas, policies that would remain in place in some form until the 1940s.

⁹⁵ Torpey, 99. Aristide Zolberg has written extensively of the development and emergence of these systems of what he calls ‘remote control’ which allowed states to “select immigrants by projecting [their] boundaries into immigrant-source countries.” (Aristide Zolberg, *A Nation by Design*; p.5)

⁹⁶ Leo Lucassen. “The Great War and the Origins of Migration Control in Western Europe and the United States” in *Regulation of Migration: International Experiences*, ed. Anita Böcker. P 45

documentary identification regime were perhaps most pronounced with regard to the distinction between citizen and foreigner, helping give enduring effect to the perception of non-nations as a suspect group. As Torpey tells us, the war “brought to a sudden close the era during which governments viewed foreigners without ‘suspicion and mistrust’ and they were free to traverse borders relatively unmolested.”⁹⁷ Thus in France, Germany, and Great Britain, passport controls were put into force, either through reviving long un-enforced regulations that had otherwise been neglected since the revolutionary era, by the introducing of emergency laws necessitating passport restrictions, or through the passing of legislation that made national status central to territorial admission.⁹⁸ Notably, reflecting the dominant perspective that such movement restrictions could only be justifiably maintained in times of armed conflict, these controls were viewed as at most provisional.⁹⁹ Indeed, a number of scholars have gone so far as to suggest that even in the context of the war, the permanent end of 19th century's age of free movement would have been far from evident to most contemporary observers.¹⁰⁰ Yet the emerging ‘emergency’ mobility restrictions did indeed persist. According to one commentator, the upshot of the introduction and persistence of these documentary controls on transnational movement was that within a decade of the end of the war the “laissez-faire era of international migration had come to a close”.¹⁰¹ With this decisive break, nationality and national belonging would come to matter as never before.

⁹⁷ Torpey, invention of passport 111.

⁹⁸ John Torpey (2003): "Passports and the Development of Immigration Controls in the North Atlantic World during the Long Nineteenth Century." In Olivier Faron and Patrick Weil (eds.), *Migration Control in the North Atlantic World*. New York: Bergahn Books, 84.

⁹⁹ Salter (passports and IR) tells us that the passport regime wasn't anticipated to last more than five years.

¹⁰⁰ Lucassen. "The Great War and the Origins of Migration Control in Western Europe and the United States." [Find Cite] [Also, find the other sources]

¹⁰¹ Dowty-87-p83

While the central role of the First World War as a catalyst for the shift away from norms of free movement is generally recognized, the reasons underlying the eventual permanence of such arrangements is the subject of greater debate.¹⁰² Without intervening directly into that discussion, we can still identify a number of mutually reinforcing factors or trends that contributed to the growing concreteness and eventual permanence of the modern passport system. As already noted above, an important developed proceeding this more dramatic shift lies in the introduction of immigration restrictions and the deployment of mechanisms of 'remote control' in North America. Such developments changed the dynamics of global migration flows by greatly restricting cross-Atlantic movement, with eventually knock-off effects for intra-European migration flows as well.¹⁰³ Yet at the same time as these shifts were occurring, major European states had also begun - at least in a preliminary manner - to develop and implement national welfare systems and in some cases began to provide a greater political voice to the emerging labor movement. A consequence of this was that subsequent discussion of welfare provisions increasingly came to touch on the question of nationality in relation to the distribution of benefits.¹⁰⁴ Additionally, the rise in political prominence of labor movements also introduced a nationalist tinge to issues of labor migration. As Lucassen tells us, “[f]or the first time in history, states started to monitor migrants and to defenses rules and regulations in order to protect the national labor market”¹⁰⁵ - a development that could only have been exacerbated by the conditions of worldwide economic depression that were to shortly follow.

Indeed, another undeniable factor lies in the dramatic shift away from *laissez faire* economic ideology and policies, which had enjoyed unrivaled influence during the prior era of

¹⁰² Lucassen. 45.

¹⁰³ Torpey:2003:86; Torpey IP- 117.

¹⁰⁴ Torpey: IP: 121

¹⁰⁵ Lucassen. 45.

prevailing liberal sentiment. As documented in the work of Karl Polanyi, “protectionism was everywhere producing the hard shell of the emerging unit of social life” as the end of the long 19th century bore witness to the emergence of a new “new crustacean type of nation” that was inward-looking in both policy and practice.¹⁰⁶ Torpey links the persistence of constraints on cross-border movement to these “economic policies that dramatically reversed the economic liberalism that had underwritten the late nineteenth century period of unencumbered movement.¹⁰⁷ The rapid end of free trade and rise of protectionism however only helped bring about the Great Depression, which imposed a world-wide state of acute economic crisis and instability throughout the 1930s.¹⁰⁸ What is more, the shifting economic circumstances themselves arguably soon became an intervening cause in reinforcing this very trend toward hardening national borders, as states facing soaring unemployment levels sought to deflect unwanted labor migrants.

A more complex dynamic, hinted to by the work of Torpey, which likely contributed to the ossifying of passport controls, lies in a probable shift in perception regarding the nature of state capacity.¹⁰⁹ Prior to the introduction of passport controls during the First World War, the ability of states to regulate the movement of citizens and effectively police their borders remained largely untested. Yet the First World War, which witnessed the mass mobilizations of hitherto unimaginably large industrial armies, the deployment of highly planned rationing, centralized economic management, as well as other unprecedented state interventions must have accomplished quite a reappraisal of the state’s bureaucratic and infrastructural power. Indeed, as

¹⁰⁶ Karl Polanyi, *The Great Transformation*, 211.

¹⁰⁷ Torpey: IP: 129

¹⁰⁸ It is worth noting that the economic depression cannot be treated as an exhaustive cause, given that prior economic crises had provoked no such parallel responses. (Lucassen:46) Hence my preference on emphasizing a constellation of factors rather than a primary cause.

¹⁰⁹ Torpey -2003-87

we noted, prior to the war policymakers seemed to at times view the radical technological innovations of the end of the 19th century as forever foreclosing the capacity of states to control their borders. The wartime restrictions on border crossings revealed these challenges to be far from insurmountable, a development that surely must have contributed to their persistence.

A final factor most pertinent to this project lies in the explosion and spread of mass refugee flows, beginning in the context of closing years of the First World War and persisting throughout the interwar era itself. Starting with the growing number of Russian émigrés fleeing the turmoil of the Russian revolution, the early 20th century thus saw the proliferation of statelessness across the European continent. The various causes of these flows have already been canvassed at the opening of this chapter. These include the rapid and violent collapse of the multiethnic Russian, Ottoman, and Austro-Hungarian empires, the creation of a series of successor states in the wake of the end of hostilities, as well as the mass denationalizations and forced population transfers that accompanied these state-building projects. As noted earlier, this was not the first time that the European continent had born witness to forced migration on a massive scale. What was distinct is that these displacements were increasingly framed and justified in terms of claims of national belonging. What is more, this period also bore witness to the novel combination of massive refugee flows alongside the till then unprecedented involvement of states in the identification of refugees as such. Indeed, prior to the 20th century the state had not been an active participant in the identification and resettlement of refugee populations.¹¹⁰ In this context passport controls were seen and actively employed as mechanisms to both deflect, as well as identify and intern, refugees and asylum seekers. Indeed, thought of as temporary, “the development of immigration restrictions worldwide erected a new obstacle to the

¹¹⁰ Sassen – find cite.

resolution of refugee problems.”¹¹¹ There was therefore a perverse feedback effect between the institution of passport controls and the proliferation and permanence of statelessness as a phenomenon, a subject we will return to in the next chapter.

2. Coordinating Citizenship: Nationality in the Inter-state System

As Torpey’s account stresses, the period surrounding the First World War represents a watershed in the development and deployment of passport controls by European states, one that would for the first time place nationality at the center of border crossings. The radical reversal of Europe’s age of free movement would be both permanent and long-lasting in its effects on the matter of statelessness. Yet a focus on the changing practices of individual state actors tells only part of the story, for equally important was the institutionalization of mechanisms of documentary control and border coercion at the inter-state level. Only through practices constituted through states acting in concert could the salience of nationality come to take on its current form.

A necessary dimension of the permanence of documentary controls and their enduring effect upon statelessness thus rests on the coming into being of novel interstate norms.¹¹² We can help see how this is the case by considering the recent project of a number of scholars to understand the practice of state sovereignty itself as a socially constructed activity. Pace realist theorists who have tended to naturalize the idea of state sovereignty as a timeless entailment of the logic of the system of states itself, constructivist theorists have attempted to delineate sovereignty as the outcome of historically situated and inter-subjectively constituted norms that

¹¹¹ C. Skran – p 21; Will discuss in chp. 3 With reference to Nansen passport. RHC.

¹¹² Might be useful to discuss this with reference to regimes lit and the emergence of an international passport regime

came to structure the actions of state actors.¹¹³ In a parallel fashion, the process of giving nationality concrete form also relied upon the development of shared state practices that began to take shape in the early 20th century. Scholars have noted the crucial role of coordinate state action. Thus Torpey tell us that,

Ultimately authority to regulate movement came to be primarily a property of the international system as a whole, that is, of nation states acting in concert to enforce their interests in controlling who comes and goes.¹¹⁴

Thus the broader state system and increasingly more developed state of international society was directly implicated in stabilizing the emerging regime of passport controls.

The clearest indication of the central role of coordinated state action in the consolidation of effective documentary controls and the subsequent salience of nationality can be identified by considering the functions implicit in the curious logic of the modern passport. While as individuals we tend to experience the passport as a document authorizing—indeed, guaranteeing—entrance to our country of citizenship, from the standpoint of international law the passport governs the relationship between states. In this context, the passport functions in conjunction with the doctrine of restricted return ability, under which a state is obligated to admit their own citizens to prevent situations in which the state of which the individual is a natural might frustrate or undermine the legitimate efforts of another expelling or deporting an unwanted alien. As Torpey puts it,

the fundamental purpose of passports from the point of view of international law is to provide to the admitting state a prima facie guarantee that another state is prepared to accept an alien that the destination state may choose not to admit or to expel.¹¹⁵

¹¹³ *State Sovereignty as Social Construct*. (beirsteker and weber)

¹¹⁴ Torpey, IP 9.

¹¹⁵ Torpey, 163.

Yet the accomplishment of this end and the successful implementation of modern documentary controls centered on nationality is only possible through the cooperative practices of states. This is because with a shift to more rationalized and regularized passport controls, documents came to be issued by only a single state only to those able to assert their nationality.¹¹⁶ But in order to be effective as a mean to regulate cross border movement such documents must possess ‘interoperability’ within a broader international society.¹¹⁷ They must be reasonably consistent and uniform, helping support and form a system of shared practices and regularly fulfilled expectations among states. Passport controls must come to constitute a regime. Without doing so, they simply cannot fulfill their modern function in international relations.

Accordingly, a crucial dimension of the growing salience of nationality lies in the increasingly concrete interstate system that was coming into being. This process went far beyond the question of documentary controls, and yet the importance of state coordination in this matter remains particularly vivid. The necessity of such conditions is unavoidable, for as Salter has noted, in order to be effective mechanisms of control, passports must be standardized in international society.¹¹⁸ The consequences of this necessity are only confirmed by the fact that the emergence of the modern international passport system as a complement to the developing mobility regime was soon accompanied by the codification of passport practices at an international conference in London in 1920.¹¹⁹ The 1920 conference on passport controls essentially standardized such documents—following the British model—fixing them in both form and function to the present day. Subsequent innovations also have relied on the

¹¹⁶ See Torpey, 83 for an account of the shift to state of origin as the sole issuer of passports.

¹¹⁷ *Identifying Citizens: ID Cards as Surveillance*. David Lyon. 99.

¹¹⁸ Mark B. Salter. *Rights of Passage: The Passport in International Relations*, 93.

¹¹⁹ Mark B. Salter. *Rights of Passage: The Passport in International Relations*, 77.

development of shared international standards in order to realistically be implemented.¹²⁰ But the beginnings this necessary coordination - a clear indication that documentary controls of nationality must be collectively implemented by states - were already well underway shortly after the First World War.

Even the idea of the exclusivity of nationality - the notion each individual in principle belonging to no more than one country - can only be produced through the active coordination of states. This is simply the case because in the absence of such coordination the divergent nationality laws of different states may very well produce cases of multiple nationalities. The centrality of exclusive nationality to the emerging state system - and the apparent abhorrence of states of the possibility of multiple and thus conflicting loyalties - led to the subsequent development of international cooperation aimed precisely at eliminating such anomalies.¹²¹ Here we might consider the notable examples of the *1930 Hague Convention on Nationality*, which attempted to enable the coordination of nationality policies as well as the subsequent *1963 European Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality*.¹²² But these examples of recourse to joint-action on the part of states only reveal the inter-subjectively constituted nature of national citizenship. For while states might claim to hold ultimate and exclusive authority over the distribution of nationality and granting of naturalization, without coordination among national authorities the realization of such prerogatives prove to be elusive.

IV. Conclusion: Towards a history of the Present

¹²⁰ Consider here machine readable passport technology, introduced in 1985. Salter, 94.

¹²¹ There is a point to be made here about citizenship being parallel to sovereignty in Hobbes' sense - there can only be one sovereign, and a citizen can only be a subject of one authority.]

¹²² Find cites on this.

In the above account I have attempted to sketch out the major shifts and historical developments necessary for the emergence of mass statelessness in the early 20th century. An important goal of this account has been to provide a needed supplement to some of the limitations present in Hannah Arendt's analysis in part because of the powerful and enduring influence of the Arendtian story for our thinking about statelessness. In offering this intervention, I hoped to both draw attention to the material and institutional developments that explain why statelessness first emerged in the interwar era and stress how the institution of coercive border controls must be understood as a product of the state system. These insights, I suggest help us both understand the historical contingency and thus mutability of statelessness, while also broadening the scope of moral responsibility beyond the often narrow framing of such matters as the result of particular 'bad' states deviating from the norms of international society.

But equally important, a major aim of this account has been to draw attention to the contingent conditions that helped constitute statelessness as a permanent and enduring phenomena as well as to draw attention to the ad-hoc and in many ways arbitrary decisions and institutional responses that formed the basis of our contemporary refugee system. More striking, much like the modern system of passport controls itself, the mechanisms put in place to deal with mass statelessness were understood as exceptional and far from permanent arrangements by their architects—who viewed such challenges as inherently temporary and limited in scope. Yet the decisions and institutional innovations of this period did indeed persist, deeply influencing both our current refugee regime and international refugee law down to the present day. Far from representing a coherent normative framework, our present arrangements thus the mark of these contingencies.

In the next chapter, we turn to the contemporary state of statelessness as it has taken form in the period leading up from the inter-war era. The task our discussion there will be two-fold. The chapter begins by offering an account of why statelessness remains a pressing problem today and how it should be understood as a systematic pathology of our modern international order. In this account, the legacies of the early 20th century discussed above are related to our contemporary circumstances, through a brief sketch of the emergence of the post-war refugee regime. The purpose of this historical reconstruction is to highlight how even the subsequent development of the international refugee regime should be viewed with skepticism and concern. From here, the chapter turns to another important dimension of contemporary statelessness—the way in which even the limited normative constraints of the global refugee regime have recently been put under strain and systematically undermined by the actions of states. There I look at a growing number of state practices—from safe-third country agreements, to extra-territorial processing, to refugee interdiction—to highlight how important dimensions of this regime are becoming increasingly emptied of their normative content. This sets up the project’s turn to developing a new framework for thinking of the claims of justice of stateless persons and refugees.

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